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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS; AAO, 20 Mass, 3/F

Washington, D.C. 20536

JUN 05 2003

File: WAC-01-218-51372

Office: California Service Center

Date:

IN RE: Petitioner:

Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

PUBLIC COPY

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ her as "women coordinator" at a salary of \$18,000 per year.

The acting director denied the petition finding that the beneficiary's claimed voluntary service with the petitioner did not satisfy the statutory requirement that she have been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition and that the petitioner had failed to demonstrate that it has the ability to remunerate the beneficiary.

On appeal, counsel for the petitioner submitted a brief arguing that the regulations do not require that the prior experience have been in a paid position. Counsel further argues that the petitioner has submitted financial audit documentation that is sufficient to establish its ability to pay the beneficiary.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of

1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is described as an Armenian Presbyterian church with a congregation of approximately 500 members and an undisclosed number of paid employees. The beneficiary is described as a native and citizen of Syria who was last admitted to the United States on February 26, 1998, as a B-2 visitor. The record reflects that the beneficiary has resided in the United States in an unlawful status since expiration of her authorized stay. The petitioner disclosed at the space provided on the petition form that the beneficiary has never worked in the United States without authorization.

The first issue to be addressed in this proceeding is whether the petitioner has submitted sufficient evidence to demonstrate that it has the ability to remunerate the beneficiary.

Regulations at 8 C.F.R. § 204.5(g)(2) state, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

In this case, the petitioner has submitted an annual audit for the year 2000 indicating that the petitioner has an endowment fund and other investments with a market value totaling in excess of 1.5 million dollars and that it has a favorable cash balance in excess of \$600,000. The petitioner submitted a 2001 budget totaling \$358,142. Accordingly, it is concluded that the petitioner has overcome the acting director's objection.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 23, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a religious occupation for at least the two years since April 23, 1999.

The record indicates that the petitioner's senior pastor provided, in pertinent part, the following information regarding the beneficiary's prior employment:

Regarding Work History:

[The beneficiary] has been a member of the Church in Fresno for more than three years. [The beneficiary] has chosen to work as a Women Coordinator under my supervision. She lends all necessary help and support to the Church, as a volunteer, until the final approval of her position by the INS.

Her job includes the following duties:

As a leading member of the choir, [the beneficiary] continues to participate in furthering and safeguarding our religious songs, traditions and cultures in conformity with the Armenian-Middle Eastern Religious rhymes and lyrics. This occupies 15% of her time equal to 4.5 hours a week.

As a women coordinator, [the beneficiary] continues to meet with the women of the congregation to establish a ladies club that will gradually encompass many religious activities. This effort involves 30% of the time and amounts to 9 hours weekly.

As youth coordinator, [the beneficiary] assists in teaching children and young people about their roots, their languages, and their religious heritage. The job includes personal encouragement and explanation to the youth to assimilate, live, preserve, and perpetuate our ancient religious traditions. She assists with Sunday school biblical-teaching to the children and youth of the congregation as well. The time involved amounts to 9 hours weekly, equaling 30% of the remaining time.

[The beneficiary] assists, also as a volunteer, in editing and writing some documents in Armenian languages to many non-English speaking youths and members of our

communities. This task requires 15% of her time and amounts to 4.5 hours weekly.

[The beneficiary] visits the elderly members of the Church and the sick as part of her duties. This task fluctuates in timing and duties. The assigned time will be approximately 3 hours weekly or 10% of her remaining time.

Means of Support:

As far as the Church is concern[ed], we attest that [the beneficiary] is a volunteer worker and, subsequently, did not receive any financial remuneration for her services rendered to the Church. Her husband is currently, and has been previously, the main supporter to the family.

The director found that a claim indicating past voluntary service was insufficient to establish that the beneficiary had been continuously carrying on a religious occupation for the minimum of two years. Counsel's argument that the regulations do not prohibit voluntary service from satisfying the requirement, and therefore allow such a claim as qualifying, is not persuasive.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines lay religious occupations, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets its own

regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

Furthermore, in evaluating a claim of prior work experience, the Service must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Service to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For all these reasons, the Service holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

The record reflects that the beneficiary has worked solely as a volunteer for the petitioner and has not been receiving any remuneration from the petitioner. Counsel's argument that such voluntary employment is "acceptable" is not compelling. The fact that many religious denominations have a tradition of utilizing Sunday school teachers, choir directors, youth ministers and other church members on a part-time voluntary basis is not in question, nor is the pastor's certification of the importance of the position to the mission of the church. The issue is whether such a position is traditionally a full-time salaried occupation requiring specific religious training in the petitioning church and/or in its parent religious denomination.

In this case, the petitioner has not established that it has ever employed a women/youth coordinator in its past and failed to provide an explanation of its decision to create a new salaried position at this time. The pastor has established that the church has utilized volunteers from among its congregation to serve this function in the past. The petitioner failed to submit any documentation showing that the position of women/youth coordinator is a traditional salaried occupation in the denomination at large. Furthermore, the schedule for the position states that it is a 30 hour per week, part-time, position. Based on the record as constituted, it cannot be concluded that the petitioner has established that the position of women/youth coordinator is a qualifying religious occupation for the purpose of special

immigrant classification. For this reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.